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IN THE

Supreme Court of the United States

OCTOBER TERM 1951

No. 102

EMMANUIL NEAPOLIDIS, ALEXANDROS ALEXANDRIS, IOANNIS LIADIS and IOANNIS VARTHOLOMEOS, *Petitioners,*

VERSUS

THE THEOFANA MARITIME COMPANY, LIMITED, AS OWNER, LIVANOS MARITIME COMPANY, LIMITED, AS CO-OWNER, S. LIVANOS AND COMPANY, INCORPORATED, AS OPERATING AGENT AND CAPTAIN M. HOUMIS, AS MASTER OF THE STEAMSHIP "MEANDROS," *Respondents.*

ON OPPOSITION TO PETITIONERS' APPLICATION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

The petition for writ of certiorari to the Supreme Court of Appeals of Virginia raises three questions (page 6 of the petition) which have been decided adversely to petitioners not only in the Courts of the State of Virginia, but also in the United States District Court for the Eastern District of Virginia and in the United States Court of Appeals for the Fourth Circuit. This

Honorable Court has refused on two prior occasions to review the decisions of the United States Court of Appeals for the Fourth Circuit dealing directly with these same questions, among others: *Maleuris et al v. Papadakis, et al.*, 1948 AMC 1721, 175 F. (2) 730, certiorari denied, 338 U. S. 894; 70 S. Ct. 241. Petition for rehearing denied. 338 U. S. 939; 70 S. Ct. 345. *The* VIRGINIA, 1950 AMC 1158; 148 F. (2) 716) certiorari denied April 9, 1951, Oct. 1951 Docket No. 560, 71 S. Ct. 612.

NOTE: All references to the Record unless otherwise noted are to the printed Record in the Court below, the same being Record No. 7355 in the Supreme Court of Appeals of Virginia. Copies of said printed Record have been filed in this Court. The various original Exhibits will be referred to by their numbers listed by the Clerk of the Trial Court in his descriptive list of said Exhibits.

I. STATEMENT

The four petitioners here are citizens of Greece who were serving as seamen aboard the Greek steamship MEANDROS of Piraeus, Greece, which ship is owned and operated by Greek citizens.

The proceeding was instituted by attachment filed in the Circuit Court of the City of Newport News, Virginia, on May 20, 1948. At the same time an identical cause of action was instituted by the four petitioners in the United States District Court for the Eastern District of Virginia, at Norfolk, in Admiralty No. 7216.

The petitioners elected to prosecute their case before the Circuit Court of the City of Newport News, and on March 28, 1949 the case was heard before that Court, the Honorable Frank A. Kearney, Judge. There was an express waiver of jury by agreement of counsel for the petitioners and respondents.

On November 14, 1949 the Trial Court orally announced its decision and on January 11, 1950 a final order was entered. Petitioners, not being satisfied with the recovery awarded them by the Trial Court, sought and obtained a writ of error from the Supreme Court of Appeals of Virginia.

The case was then heard before the Supreme Court of Appeals of Virginia where counsel for the petitioners and respondents submitted oral argument on January 17, 1951. The Virginia Supreme Court handed down its opinion on March 12, 1951 (192 Va. 90; 60 S. E. (2) 795), and it is from this decision, which modified the awards made by the Trial Court, that petitioners have applied for a writ of certiorari.

II. ARGUMENT

1. The Petitioners Have Failed To Present Valid Reasons For Invoking The Jurisdiction of the Supreme Court of the United States.

The required statement disclosing the basis of this Court's jurisdiction to review the judgments and de-

crees of the Supreme Court of Appeals of Virginia and the Circuit Court of the City of Newport News with the exception of reference to Title 28 U. S. C. A. 1257 is entirely lacking. (Pet. for Writ, page 2).

The three questions presented do not question the validity of any treaty or statute of the United States or of any State, and no "title, right, privilege of immunity is specially set up or claimed under the Constitution, treaties or statutes of.....the United States". (28 U. S. C. A. 1257).

2. The Question Of Maintenance And Cure.

The first question raised by the petition concerns the liability of the ship owner and master for an alleged failure or refusal to furnish prompt and adequate maintenance and cure. This was the sixth assignment of error in the Supreme Court of Appeals of Virginia. (R. 3).

This question is solely one of fact and involves absolutely no legal principle.

The issue was submitted to the Trial Judge who was sitting without a jury. His findings, therefore, were binding on the Supreme Court of Appeals of Virginia, unless they were plainly wrong or without evidence to support them. The Trial Court awarded petitioner Liadis a recovery of $243.75 on account of maintenance and cure, and denied Neapolidis any recovery on this

ground because this seaman had never told the master that he had contracted a venereal disease. (R. 58, 59), and as soon as the master learned of this seaman's condition, Neapolidis was immediately hospitalized. (R. 57, 59, 71).

There was no conflict of evidence on this question and the Trial Court's decision was binding. This rule is stated very clearly in the Virginia Code of 1950, Title 8, Section 491, which is as follows:

> "When Judgment of Trial Court Not To Be Set Aside Unless Plainly Wrong, Etc.—
>
> When a case at law, civil or criminal, is tried by a jury and a party excepts to the judgment or action of the court in granting or refusing to grant a new trial on a motion to set aside the verdit of a jury on the ground that it is contrary to the evidence, or when a case at law is decided by a court or judge without the intervention of a jury and a party excepts to the decision on the ground that it is contrary to the evidence, and the evidence, not the facts, is certified, the judgment of the trial court shall not be set aside unless it appears from the evidence that such judgment is plainly wrong or without evidence to support it."

The Virginia Supreme Court sustained the Circuit Court of the City of Newport News under this principle, and stated as follows:

> "(18). We are of the opinion that the testimony of the Master, which the lower court has accepted

as true, amply supports the findings that this officer was guilty of no misconduct or negligence in furnishing medical attention to this seaman." (63. S.E. 2d 802).

"Even if it had been the obligation of the vessel to furnish this seaman medical treatment for a disease of this nature (Compare Aguilar v. Standard Oil Co., Supra, 318 U. S. at page 731, 63 S. Ct. 930), there is nothing in the circumstances we have related, or elsewhere in the record, to show that the master either willfully or negligently failed to furnish such medical treatment with reasonable promptness." (63. S.E. 2d 803).

The statute under which this finding of fact was binding on the Virginia Supreme Court is not under attack as being repugnant to the Constitution of the United States. This question being one of fact, therefore, and there being no question of law to be considered, there is no basis for invoking the jurisdiction of the Supreme Court of the United States.

3. The Petitioners Are Not Entitled To Liquidated Damages Provided By 46 U.S.C.A. 596-597.

The second question raised in the petition for writ of certiorari seeks a recovery of liquidated damages provided by 46 U. S. C. A. 596-597. This section provides, in substance, that the master or owner of any vessel making foreign voyages shall pay seamen their wages within 24 hours after the cargo has been dis-

charged, or within 4 days after the seamen have been discharged, whichever happens first. The portion of the Act upon which the petitioners rely reads as follows:

> "Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned *without sufficient cause* shall pay to the seamen an equal to two days' pay for each and every day during which payment is delayed beyond the respective periods. . . .". (Italics Ours).

Significantly the petitioners fail to state that both the Circuit Court of the City of Newport News and the Supreme Court of Appeals of Virginia decided as a matter of fact that in this case there was no withholding without sufficient cause. See *Neapolidis v. Theofana Maritime Co.*, 60 S. E. (2) 803, as follows:

> "21. The final assignment of error, which we need consider, is that the conduct of the master toward the petitioners was such as to constitute their 'discharge without sufficient cause', and that consequently they are entitled to 'severance pay' and passage money to Greece.
>
> "Article 361 of the Greek Code, provides in substance that a seaman 'discharged without sufficient cause' at a port in the United States is entitled to 'four months' pay' and the cost or means of repatriation.
>
> "But here there is no showing that any of these petitioners was discharged without sufficient cause.

As already stated, only Neapolidis was actually discharged, and this at his own request. The other three petitioners breached their contract of employment and voluntarily left the ship shortly before it sailed.

"Clearly, then, the lower court was right in rejecting their claims for severance pay and cost of repatriation".

Again, therefore, there has been a finding of fact by the Trial Court which was sustained by the Virginia Supreme Court. This finding of fact involves no legal principle or constitutionality of any statute. Accordingly, there is no basis to invoke the jurisdiction of the Supreme Court of the United States.

Moreover in factual situations practically the same as in this case, the United States District Court for the Eastern District of Virginia and the United States Court of Appeals for the Fourth Circuit have refused to allow any recovery of "waiting time" under the provisions of 46 U. S. C. A. Their decisions have been before this Court which has in each case denied certiorari. The VIRGINIA, 1950 AMC 1158; 148 F. (2) 716; certiorari denied April 9, 1951. The CAPT. K. PAPAZOGLOU; 175 F. (2d) 734; certiorari denied 338 U. S. 894, 70 S. Ct. 241, rehearing denied 338 U. S. 939, 70 S. Ct. 345.

In this proceeding petitioners seek a "waiting time" recovery for failure of the ship owners to pay a

long service bonus. The Trial Court allowed a recovery of this long service bonus. This was contrary to the decisions in the Federal Courts,—*The* VIRGINIA, Supra, *The* CAPT. K. PAPAZOGLOU, Supra, and the decision in *Galaxias Steamship Company v. Christofis et al* (King's Bench Division), 81 Lloyds' List, 1948 Law Reports, 500.

Manifestly the Courts below have been justified in making their finding of fact that this bonus was not withheld without sufficient cause.

4. Petitioners Are Not Entitled To Any Severance Pay Or Discharge Indemnity Under Article 361 Of The Greek Commercial Code.

The third question raised in the petition for writ of certiorari is the same as the second assignment of error before the Supreme Court of Virginia. (R. 2).

Similar to the preceding two questions raised, petitioners are, in the third question, (page 3 of the petition for writ of certiorari), seeking a review of fact.

The question itself as stated by petitioners concerns only the relations between a Greek Shipowner, a Greek ship captain, and Greek seaman under provisions of Article 361 of the Greek Commercial Code.

There is absolutely no basis or foundation on which the jurisdiction of the Supreme Court of the United States can be invoked.

III. CONCLUSION

The respondents submit that the decisions of the Supreme Court of Appeals of Virginia and of the Circuit Court of the City of Newport News, Virginia, are eminently correct. The many and varied claims asserted by the petitioners were based on questions of fact which the Courts below resolved in favor of the respondents; the decisions of the Courts below are based on ample and substantial evidence.

There is no real conflict of authority as to the basic points involved, no new or novel questions needing further clarification and no question of general interest warranting the granting of a writ of certiorari in accordance with the petitioners' application.

For these reasons the decrees of the Supreme Court of Appeals of Virginia and of the Circuit Court of the City of Newport News, Virginia, should not be disturbed and a writ of certiorari should be denied.

Respectfully submitted,

LEON T. SEAWELL,

HARRY E. MCCOY, JR.,

Of Counsel.

Hughes, Little & Seawell,
Norfolk, Virginia
July 5, 1951